

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA Y. OLIVER and U.S. POSTAL SERVICE,
POST OFFICE, Carol Stream, IL

*Docket No. 03-687; Submitted on the Record;
Issued May 23, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a low back injury on June 13, 1997 in the performance of duty.

On July 9, 1997 appellant, then a 35-year-old flat sorting machine (FSM) operator, filed a claim alleging that, on June 13, 1997, while lifting sacks weighing 50 to 70 pounds, she hurt her back, hips and legs. She stopped work on the Monday following her alleged Friday injury and did not return until August 18, 1997. On August 23, 1997 the employing establishment controverted appellant's injury claim noting that appellant did not inform a supervisor of the alleged injury or seek medical treatment from a physician following the alleged injury until July 7 and 8, 1997 that, when she submitted medical evidence, it referred to a previous motor vehicle accident in September 1996 and that a witness to the alleged incident indicated that she had no knowledge of such injury.

In support of her claim, appellant submitted multiple medical records which covered the period preceding her alleged employment injury.¹

A June 2, 1997 form report from a physician with an illegible signature, which predated appellant's alleged employment injury, indicated that she suffered from a contusion of the sacrum and chronic sacroiliitis which was aggravated by prolonged standing and walking. The physician noted that appellant's condition began September 9, 1996. The record indicates that appellant was involved in a motor vehicle accident where she was rear-ended on September 7, 1996.

¹ Appellant was supposedly working with medical restrictions due to her nonwork-related September 7, 1996 motor vehicle accident.

A July 7, 1997 work status report diagnosed “back spasm” and indicated that appellant was unable to work May 26 through 30, 1997, a period prior to the alleged employment injury and from June 15 to 25, 1997.

A July 21, 1997 Cook County Hospital treatment form noted that appellant was treated there that date, that she was unable to work from July 14 to 21, 1997 and that she could resume work on July 22, 1997 with no lifting of heavy weights. Diagnosis was noted as “low back pain.” As history, the hospital treating physician noted that appellant had been in a motor vehicle accident during which she was rear-ended and that, since then, she had had back pain.

A July 23, 1997 authorization for medical attention indicated appellant’s condition as “back injury,” checked “yes” as to whether it was job related and noted work restrictions of “no heavy lifting.” The signature was illegible.

An August 13, 1997 limited-duty assessment from Dr. Mark P. Cavalenes, a Board-certified orthopedic surgeon, limited appellant’s lifting to 10 pounds and noted that she was restricted from bending, twisting and turning.

An August 15, 1997 duty status certificate signed by Dr. Cavalenes noted a diagnosis for appellant of “low back strain,” noted that she was disabled for work from July 24 through August 18, 1997 and noted that she could resume work on August 18, 1997.

Appellant also submitted an August 29, 1997 work status verification which noted a diagnosis of “low back strain,” and indicated that appellant was disabled from August 22 through 29, 1997. This certificate was signed by Dr. Cavalenes.

By decision dated October 15, 1997, the Office of Workers’ Compensation Programs rejected appellant’s claim finding that the medical evidence of record failed to establish causal relationship of her back condition with her June 13, 1997 employment activities.

Appellant disagreed with the October 15, 1997 decision and she requested an oral hearing before an Office hearing representative.

An October 22, 1997 investigative memorandum revealed that appellant had a new job with the school board, but appellant later denied that she had a new job.

A hearing was held on June 24, 2002 at which appellant testified. She claimed that she was working light duty on June 13, 1997 and was required to lift heavy bags of mail which caused her back condition to worsen. Appellant claimed that she was capable of full-time light-duty work, thereafter, but that her employer would not allow her to work for various periods of time. She claimed that she stopped working due to harassment by supervisors and disputes concerning her duty status.

By decision dated October 7, 2002, the hearing representative affirmed the October 15, 1997 Office decision finding that the medical evidence of record was insufficient to establish causal relationship between appellant’s job activities on June 13, 1997 and her back condition or its aggravation.

The Board finds that appellant has failed to establish that sustained a low back injury on June 13, 1997 in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

In this case, the Office accepts that appellant experienced the employment incident, lifting heavy sacks of mail, at the time and place and in the manner alleged. However, appellant has not submitted sufficient medical evidence to establish that the employment incident caused a personal injury.

The medical evidence submitted consists largely of form reports and certificates which merely state a diagnosis, "low back pain," and indicate a period of disability and/or work restrictions. Some of the form reports refer to appellant's September 7, 1996 motor vehicle accident as causative and some predate the alleged employment incident. Therefore, these reports have no probative value. None of the form reports contains a physician's rationalized medical opinion discussing causal relation of her post-June 13, 1997 symptoms with employment factors encountered on June 13, 1997. Rationalized medical evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *John J. Carlone*, 41 ECAB 354 (1989). To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); see also *George W. Glavis*, 5 ECAB 363 (1953).

⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. §10.5(a)(14).

relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁷ No such opinion has been submitted to the record in this case.

The medical evidence submitted by appellant lacked any identification of employment factors involved, *i.e.* lifting 50- to 70-pound sacks of mail on June 13, 1997, lacked discussion of how these factors caused or aggravated appellant's subsequently diagnosed condition, lacked an analysis of the pathophysiology involved and lacked prognosis relating to appellant's continued employment other than stating the date disability ended. Some of the evidence even lacked a firm diagnosis, noting appellant's condition only as "low back pain" or "back injury." The Board has held that the weight of medical opinion is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are factors which enter into this evaluation.⁸ Appellant has submitted no such rationalized medical evidence to support her claim in this case.

An August 15, 1997 duty status report from Dr. Cavallenes diagnosed "low back strain" and checked "yes" to the question of whether the condition found was causally related to appellant's employment. However, the Board has frequently explained that opinions consisting merely of checking the "yes" box on a form report is insufficient, without further explanation and detail, to establish causal relationship.⁹ Therefore, this form report is insufficient to establish a causal relationship with the June 13, 1997 employment factors. An August 29, 1997 work status verification suffers from the same omissions as the August 15, 1997 form report.

Moreover, the medical evidence of record mitigates against appellant's claim of June 13, 1997 injury as it demonstrates that appellant had significant low back pain and problems prior to the alleged employment injury, and had previously been under treatment and had been put on activity restrictions, causally related to her September 7, 1996 motor vehicle accident. The evidence of record also supported that appellant was able to walk one mile and perform step aerobics without documented problems following the June 13, 1997 alleged injury.

The Board, therefore, finds that appellant has failed to meet her burden of proof to establish that the mail handling on June 13, 1997 caused her a discreet low back injury which thereafter disabled her for regular work.

⁷ See *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ See *Jean Culliton*, 47 ECAB 728 (1996); *Cleopatra McDougal-Saddler*, 47 ECAB 728 (1996).

⁹ See *Alberta S. Williamson*, 47 ECAB 569 (1996); *Lester Covington*, 47 ECAB 539 (1996).

Consequently, the decision of the Office of Workers' Compensation Programs dated October 7, 2002 is hereby affirmed.

Dated, Washington, DC
May 23, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member